
HOUSE BILL 1929

State of Washington

58th Legislature

2004 Regular Session

By Representatives Lantz, Carrell, Cody, McMahan, Schual-Berke, Clibborn, Kessler, Newhouse, Campbell, Moeller, Morrell, Rockefeller, Kirby, Lovick, Kenney, Linville, Veloria, Conway, G. Simpson, Sommers and Haigh

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1 AN ACT Relating to the eight-year statute of repose in RCW
2 4.16.350; reenacting RCW 4.16.350; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The purpose of this act is to respond to the
5 court's decision in *DeYoung v. Providence Medical Center*, 136 Wn.2d 136
6 (1998), by expressly stating the legislature's rationale for the eight-
7 year statute of repose in RCW 4.16.350.

8 The legislature recognizes that the eight-year statute of repose
9 alone may not solve the crisis in the medical insurance industry.
10 However, to the extent that the eight-year statute of repose has an
11 effect on medical malpractice insurance, that effect will tend to
12 reduce rather than increase the cost of malpractice insurance.

13 Whether or not the statute of repose has the actual effect of
14 reducing insurance costs, the legislature finds it will provide
15 protection against claims, however few, that are stale, based on
16 untrustworthy evidence, or that place undue burdens on defendants.

17 In accordance with the court's opinion in *DeYoung*, the legislature
18 further finds that compelling even one defendant to answer a stale

1 claim is a substantial wrong, and setting an outer limit to the
2 operation of the discovery rule is an appropriate aim.

3 The legislature further finds that an eight-year statute of repose
4 is a reasonable time period in light of the need to balance the
5 interests of injured plaintiffs and the health care industry.

6 The legislature intends to reenact RCW 4.16.350 with respect to the
7 eight-year statute of repose and specifically set forth for the court
8 the legislature's legitimate rationale for adopting the eight-year
9 statute of repose. The legislature further intends that the eight-year
10 statute of repose reenacted by section 2 of this act be applied to
11 actions commenced on or after the effective date of this act.

12 **Sec. 2.** RCW 4.16.350 and 1998 c 147 s 1 are each reenacted to read
13 as follows:

14 Any civil action for damages for injury occurring as a result of
15 health care which is provided after June 25, 1976 against:

16 (1) A person licensed by this state to provide health care or
17 related services, including, but not limited to, a physician,
18 osteopathic physician, dentist, nurse, optometrist, podiatric physician
19 and surgeon, chiropractor, physical therapist, psychologist,
20 pharmacist, optician, physician's assistant, osteopathic physician's
21 assistant, nurse practitioner, or physician's trained mobile intensive
22 care paramedic, including, in the event such person is deceased, his
23 estate or personal representative;

24 (2) An employee or agent of a person described in subsection (1) of
25 this section, acting in the course and scope of his employment,
26 including, in the event such employee or agent is deceased, his estate
27 or personal representative; or

28 (3) An entity, whether or not incorporated, facility, or
29 institution employing one or more persons described in subsection (1)
30 of this section, including, but not limited to, a hospital, clinic,
31 health maintenance organization, or nursing home; or an officer,
32 director, employee, or agent thereof acting in the course and scope of
33 his employment, including, in the event such officer, director,
34 employee, or agent is deceased, his estate or personal representative;
35 based upon alleged professional negligence shall be commenced within
36 three years of the act or omission alleged to have caused the injury or
37 condition, or one year of the time the patient or his representative

1 discovered or reasonably should have discovered that the injury or
2 condition was caused by said act or omission, whichever period expires
3 later, except that in no event shall an action be commenced more than
4 eight years after said act or omission: PROVIDED, That the time for
5 commencement of an action is tolled upon proof of fraud, intentional
6 concealment, or the presence of a foreign body not intended to have a
7 therapeutic or diagnostic purpose or effect, until the date the patient
8 or the patient's representative has actual knowledge of the act of
9 fraud or concealment, or of the presence of the foreign body; the
10 patient or the patient's representative has one year from the date of
11 the actual knowledge in which to commence a civil action for damages.

12 For purposes of this section, notwithstanding RCW 4.16.190, the
13 knowledge of a custodial parent or guardian shall be imputed to a
14 person under the age of eighteen years, and such imputed knowledge
15 shall operate to bar the claim of such minor to the same extent that
16 the claim of an adult would be barred under this section. Any action
17 not commenced in accordance with this section shall be barred.

18 For purposes of this section, with respect to care provided after
19 June 25, 1976, and before August 1, 1986, the knowledge of a custodial
20 parent or guardian shall be imputed as of April 29, 1987, to persons
21 under the age of eighteen years.

22 This section does not apply to a civil action based on intentional
23 conduct brought against those individuals or entities specified in this
24 section by a person for recovery of damages for injury occurring as a
25 result of childhood sexual abuse as defined in RCW 4.16.340(5).

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